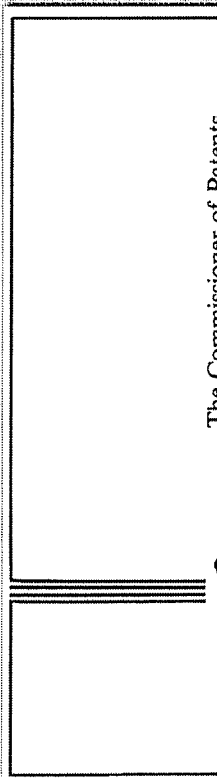




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WIRELESS LOCATION TECHNOLOGY

TruePosition's Motion for Permanent Injunctive Relief



The Commissioner of Patents

Grants to the person or persons having title to this patent the right to exclude others from making, using or selling the invention throughout the United States



of America for the term of seventeen years from the date of this patent, subject to the payment of maintenance fees as provided by law.

Bence Lehman

Commissioner of Patents and Trademarks

Melissa Gary
Attorney



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Each eBay Factor Favors Granting an Injunction

- TruePosition has suffered an irreparable injury (and will continue to suffer irreparable injury) due to Andrew's infringing sales
- Money damages cannot compensate TruePosition
- The balance of hardships favors TruePosition
- An injunction will not disserve the public interest

eBay Inc. v. MercExchange, LLC, 126 S. Ct. 1837, 1839 (2006)

TruePosition's Motion for Enhanced Damages and Attorneys' Fees

- Even Before *Seagate*, Willful Infringers as a Rule Were Subject to Enhanced Damages and Attorneys' Fees
- “After an express finding of willful infringement, a trial court should provide reasons for not increasing a damages award or for not finding a case exceptional for the purpose of awarding attorneys fees.” *Tate Access Floors v. Maxcess Techs.*, 222 F.3d 958, 972 (Fed. Cir. 2000) (internal citations omitted).



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TruePosition's Motion for Enhanced Damages and Attorneys' Fees

- “The paramount determination . . . is the egregiousness of the defendant’s conduct based on all the facts and circumstances.” *Read Corporation v. Portec, Inc.*, 970 F.2d 816, 826 (Fed. Cir. 1992).



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TruePosition's Motion for Enhanced Damages and Attorneys' Fees

- Andrew is a willful infringer even under the heightened Seagate standard
- The egregiousness of Andrew's behavior surpassed even the Seagate standard in that it ***specifically intended*** to infringe
- Read factors require enhancement

Read Factor #2: Andrew's Reckless Disregard of the Patent Supports Increased Damages

- “[W]hether the infringer, when he knew of the other’s patent protection, investigated the scope of the patent and formed a good faith belief that it was invalid or that it was not infringed.” *Read*, 970 F.2d at 827.
- 4 notices of 144 patent (PTX 7, 8, 17 and 18)
- Lawyers carefully studied the 144 patent in prior case (Tr. at 500:22-501:8)



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Read Factor #2: Andrew's Reckless Disregard of the Patent Supports Increased Damages

- Settlement Agreement implied that TruePosition would pursue Andrew for infringement if Andrew began locating cell phones using the control channel (PTX 15R at ¶¶6 and 9)
- No evidence of an opinion
- No pre-suit evidence that Andrew had a good faith belief of noninfringement or invalidity



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Read Factor #3: Andrew's Litigation Behavior Supports Increased Damages

- “[T]he infringer’s behavior as a party to the litigation.” *Read*, 970 F.2d at 827.
- Andrew’s Bad Faith Defenses
- Andrew’s Disregard of the Court’s Rulings
- Andrew’s Pre-Trial Ambush
- Andrew’s Trial By Ambush
- Andrew’s Post-Trial Ambush